HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 37 of 2001
(FAFO No. 826/2000)

Mahant Vijay Giri & another
vs
Committee of Management and others.

Approved for reporting.

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Not approved for reporting

Date of decision 09.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 37 of 2001
(Old No. 826/2000)

Mahant Vijay Giri & another ..... Appellants

Versus

Committee of Management, Sri Mithilesh Sanatan Dharm Higher Secondary School, Kankhal, Haridwar & others ..... Respondents

Sri S.K. Jain, Advocate for the petitioner
Sri L.P. Naithani, Sr. Advocate assisted by Sri T.A. Khan, Advocate for the respondent.

Dated: August 9, 2004

Hon. Rajesh Tandon J.

Heard the learned counsel for the parties at length.

Present appeal has been filed against the order dated 2.5.2000 passed by the Civil Judge (SD) Hardwar in Misc. Case No. 8/99 Vijai Giri and another vs. Sri Mithilesh Sanatam Dharm Higher Secondary School rejecting the application filed under Order 9 Rule 9 C.P.C.

Brief facts of the case are that the plaintiff filed a suit for permanent injunction and for declaration of transfer deed as null and void. During the pendency of the suit the case was dismissed in default on 29th January 1999. The plaintiff has filed an application under Order 9 Rule 9 C.P.C. for restoration of the suit. It was stated in the application that appellant no.2

was doing pairavi in the case and on 24.1.1999, he fell ill and, therefore, could not attend the court nor could informed the counsel. The learned Civil Judge has rejected the application for restoration on technical ground only.

Cause shown by the appellant for not attending the trial court appears to be genuine. The application for restoration of the suit was filed only after two days after passing the order of dismissal.

The need of society is that there should by justice oriented approach and the application for restoration should not be rejected only on the ground of technicalities.

The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the aforesaid facts, the order dated 2.5.2000 passed by the Civil Judge (SD), Hardwar is hereby set aside. The suit is restored to its original number. The Civil Judge is directed to decide the suit within three months after the receipt of the certified copy of this order. The counsel for the respondents has submitted that application under Order 7 Rule 11 is already pending. The Civil Judge shall dispose of said application first before disposing of the suit. However, the parties shall not take unnecessary adjournment.

The appeal is allowed. The interim order passed by this Court is discharged. No order as to costs.

(Rajesh Tandon J.)

9.8.2004
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HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 37/01
(Old No. 826/2000)

Mahanta Prayag Giri & anothers
Vs
Committee of Management Haridwar

~~Approved for reporting~~

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Not approved for reporting

Date of decision 17.8.2004

Initial of Judge

HIGH COURT OF UTTARANCHAL
AT NAINITAL

A.O. NO. 37/2001
(Old No. 826/2000)

Mahant Prayag Giri & another .... Appellants
Versus
Committee of Management, Sri Mithilesh Sanatan Dharm Higher Secondary School, Kankhal, Haridwar & others . Respondents

Sri S.K. Jain, Advocate for the petitioner
Sri L.P. Naithani, Sr. Advocate assisted by Sri T.A. Khan, Advocate for the respondent.

Dated: August , 2004

Hon. Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

Present appeal has been filed against the order dated 2.5.2000 passed by the Civil Judge (SD) Hardwar in Misc. Case No. 9/99 Prayag Giri and another vs. Sri Mithilesh Sanatan Dharm Higher Secondary School rejecting the application filed under Order 9 Rule 9 C.P.C.

Brief facts of the case are that the plaintiff filed a suit for permanent injunction and for declaration of transfer deed as null and void. During the pendency of the suit the case was dismissed in default on 25th January 1999. The plaintiff has filed an application under Order 9

Rule 9 C.P.C. for restoration of the suit. It was stated in the application that appellant no.2 was doing pairavi in the case and on 24.1.1999, he fell ill and, therefore, could not attend the court. He could not inform the counsel as well. The learned Civil Judge has rejected the application for restoration on technical ground only.

Cause shown by the appellant for not attending the trial court appears to be genuine. The application for restoration of the suit was filed only after two days of passing the order of dismissal.

The need of the society is that there should be justice oriented approach and the application for restoration should not be rejected only on the ground of technicalities.

The Apex Court has held in (2001) 8 SCC 151, M.S. Grewal vs. Deep Chand Sood as under:

"Law Courts will lose their efficicacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

In view of the aforesaid, the order dated 2.5.2000 passed by the Civil Judge (SD), Hardwar is hereby set aside. The suit is restored to its original number. The Civil Judge is directed to decide the suit within three months after the receipt of the certified copy of this order.

The counsel for the respondents has submitted that application under Order 7 Rule 11 is already pending. The Civil Judge shall dispose of said application first before disposing of the suit. However, the parties shall not take unnecessary adjournment.

The appeal is allowed. The interim order passed by this Court is discharged. No order as to costs.

Dated: August 17, 2004 **(Rajesh Tandon J.)**
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Time Extension App.
In
A.O. No. 37 of 2001
(Old No. 826/2000)

Hon. P.C. Pant, J.

This is an applications / letter dated 13.03.2006 sent by the Presiding Officer of the Court of Civil Judge (Senior Division), Haridwar for further time for deciding the O.S. No. 194 of 1993.

Perusal of the record shows that the Appeal From Order No. 37 of 2001 (old No. 826 of 2000) was finally decided by another Bench of this Court on August 9, 2004, whereby the trial court was directed to dispose of the suit within a period of three months.

Considering the ground mentioned by the trial court, further three months time from today, is allowed for deciding the suit pending before it.

(Prafulla C. Pant, J.)

Dt. 27.03.2006
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